(3)

CRA/258/01

न्यायालय- श्री सी०एल०पटेल, अपर सत्र न्यायाधीश, मुंगेली,
सत्र खण्ड बिलासपुर, जिला बिलासपुर (छ0ग0)

सत्र प्रकरण क्रमांक- 209/99

छत्तीसगढ़ शासन की ओर से,
आरक्षी केन्द्र कुण्डा,
जिला कवर्धा. ———————— अभियोजन

विरुद्ध

1- पवन गिरी गोस्वामी उर्फ सुभाष,
गिरी गोस्वामी आ० औरबहरा,
गिरी गोस्वामी, आयु करीब,
37 वर्ष.

2- औरबहरा उर्फ गंगा गिरी गोस्वामी,
आ० प्रेम गिरी गोस्वामी, आयु,
करीब 67 वर्ष.

दोनो निवासी ग्राम पुतलीडला, थाना,
कुण्डा, जिला कवर्धा (छत्तीसगढ़)——— अभियुक्तगण

न्यायालय एवं०पी०दुबे, न्या०द्वि०श्रे० मुंगेली, के द्वारा दा०प्र०क्र० 615/99 में दि० 30/6/99 को पारित उपार्पण आदेश से उद्भूत सत्र प्रकरण।

निर्णय

XI-HC-22

(18)

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आदेश पत्रक

मामला क्रमांक Cr.A.No.1058 **सन्** 2001

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH

HON'BLE MR. L.C. BHADOO &

HON'BLE MR. V.K. SHRIVASTAVA, JJ.

4-10-2006

Miss Nirupama Bajpai, counsel for the appellant.

Mr. U.K.S. Chandel, Panel Lawyer for the State/respondent.

Oral judgment dicta on *Dais*.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 18th July 2001 passed by the Additional Sessions Judge, Mungeli, in S.T. No.209/99 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo R.I. for one year. However, co-accused Khorbehra @ Ganga, father of the accused/appellant, was acquitted.

Case of the prosecution, in brief, was that on 6-5-99 at about 8 a.m. when Khorbehra was working at the place of incident, deceased Sethram Kurmi called PW-2 Aadesh Giri, PW-3 Ram Sahai, PW-7 Chandrasen Giri and PW-8 Narayan Giri at the place of incident in order to show them that accused Khorbehra was encroaching upon the public land. The accused after digging the sand of his field was

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throwing outside. Accused/appellant Pawan was taking away that sand towards Kothar. Deceased Sethram Kurmi and others asked accused Khorbehra as to why he was encroaching upon the public land, on which Khorbehra replied that the land belongs to him, if they have any doubt, they can call Patwari for the purpose of measurement. In the meantime, accused/appellant Pawan came on the spot and started talking, on which Sethram Kurmi asked him as to why he was talking irrelevant, on which some altercation took place between the two. Accused Pawan picked up the pickaxe which was lying there and attacked on the head of the deceased, as a result of which he sustained fatal injury on the right side of head behind the right ear, fell down and succumbed to the injury. The matter was reported to the Police Station Kunda on the same day at about 6.30 p.m.. Receiving this report, initially S.H.O. registered F.I.R. (Ex.-P/12 & Ex.-P/15) for commission of offence under Section 307 of the I.P.C., thereafter PW-5 B.D. Bandhe gave merg intimation (Ex.-P/13 & Ex.-P/14), on which offence was converted under Section 302 of the I.P.C. After registration of the case, the Investigating Officer left for scene of occurrence, after giving notice Ex.-P/4 to the Panchas, prepared inquest report (Ex.-P/5) of the body of deceased Sethram Kurmi. Patwari prepared the site plan Ex.-P/1. Plain soil and blood stained soil were taken into possession under Ex.-P/2. The body of Sethram Kurmi was sent for postmortem examination to the Primary Health Centre, Pandariya under Ex.-P/6 where Dr. V.P. Jaiswal, (PW-4) conducted the postmortem on the dead

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

body of deceased Sethram Kurmi, prepared the postmortem report Ex.-P/7 and opined that cause of death was coma due to compression of brain caused by haemorrhage.

The accused while in the police custody gave memorandum Ex.-P/16 and in pursuance of that weapon of offence i.e. pickaxe was taken into possession under Ex.-P/17. The clothes of the accused were taken into possession under Ex.-P/18. The site plan Ex.-P/21 was prepared by the Investigating Officer.

After completion of the investigation, charge sheet was filed against the accused along with co-accused Khorbehra in the Court of Judicial Magistrate, 1st Class, Mungeli, who in turn committed the case to the Sessions Judge, Bilaspur from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish the charge against the accused persons examined 11 witnesses. Statements of the accused persons were recorded under Section 313 of the Cr.P.C. in which the accused persons stated that they were digging their own land. Accused Pawan has stated that he has not committed any crime. Sethram caught him and they have not encroached upon any government land. Weapon of offence was not recovered at his instance. He has stated that he does not know how Sethram Kurmi died, but he has not murdered him. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

persons convicted and sentenced the accused/appellant as mentioned in earlier part of this judgment. However, acquitted co-accused Khorbehra, father of the accused/appellant.

We have heard learned counsel for the parties.

Learned counsel for the accused/appellant has not disputed homicidal death of deceased Sethram Kurmi. Apart from that, PW-2 Aadesh Giri, PW-3 Ram Sahai, PW-7 Chandrasen Giri and PW-8 Narayan Giri, who witnessed the crime in question, have stated that the accused attacked the deceased with pickaxe. Dr. V.P. Jaiswal, (PW-4) has stated that he conducted postmortem on the dead body of the deceased. He noticed 2 injuries behind right ear. There was compressed fracture. There was lacerated wound over chin. One injury on the right eye. Injuries were ante-mortem in nature. Cause of death was haemorrhage on account of pressure on brain as a result of injury near ear. Therefore, in view of the above evidence, it is established that the nature of death was homicidal.

Learned counsel for the accused/appellant very fairly argued that she is not disputing the involvement of the accused/appellant in the crime in question but if the prosecution case is taken as it is, the prosecution has not been able to establish that the accused attacked the deceased with intention to cause death. The incident took place in a heat of passion on the altercation between the deceased and the

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused, without any pre-meditation or preparation, the accused picked up pickaxe and attacked the deceased.

On the other hand, learned counsel for the State/respondent supported the judgment of the trial Court.

From the evidence of PW-2 Aadesh Giri, PW-3 Ram Sahai, PW-7 Chandrasen Giri and PW-8 Narayan Giri, who witnessed the crime in question, it is established that accused Pawan attacked the deceased with pickaxe and same pickaxe was recovered at the instance of the accused.

In order to appreciate the argument advanced by learned counsel for the accused/appellant we have perused the evidence of prosecution witnesses. PW-7 Chandrasen Giri has categorically stated that on asking by Sethram he along with other persons went on the spot, they asked Khorbehra, father of the accused/appellant, as to why he was encroaching upon the public land, on which Khorbehra replied that he is not encroaching upon the public land, if they want, they can call Patwari and get it measured, on which Sethram started telling Khorbehra that up to which point his land is there, at that time, accused Pawan was coming from other side and he asked Sethram what is happening, on which Sethram replied that you have encroached upon Public pasture land and on the one hand, still you are asking as to what is happening', on which Pawan replied that as whether they are the only

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

persons who have encroached upon the Government land and others have not encroached upon the Government land. Sethram again said that he should remain keep quiet and why he is talking irrelevant, on which altercation started, thereafter scuffle started between the two. Accused Pawan picked up pickaxe which was lying on the ground and attacked on the head of the deceased. Thereafter, Pawan fled away from the place of occurrence. Sethram succumbed to the injuries. In para-8 of the cross-examination he has stated that there was no animosity between the accused and the deceased. It is also correct that Pawan has no intention to cause death of deceased Sethram. The manner in which the incident happened as narrated by PW-7, similar evidence has been given by other eyewitnesses.

From perusal of the above evidence, it is established that the deceased along with other villagers had gone to the place of occurrence and asked father of the accused/appellant not to encroach upon the Government pasture land, on which some altercation & scuffle took place between the appellant and the deceased. The accused picked up pickaxe which was lying on the ground and attacked the deceased. The facts shows that the accused attacked all of a sudden, in a heat of passion, without pre-meditation or preparation on the head of the deceased, after attacking he ran away. There is nothing on record which shows that the accused acted in a cruel or unusual manner. Therefore, we are of the considered opinion that the case of

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the accused is covered under Exception IV to Section 300 of the I.P.C.. The offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

In the result, the appeal partly succeeds, while setting aside conviction and sentence imposed upon the accused/appellant under Section 302 of the I.P.C. The accused/appellant is convicted under Section 304 Part-II of the I.P.C. and sentenced to undergo R.I. for 10 years. In para-43 of the judgment, it has been mentioned that the accused is in detention since 6-5-99 till today. The accused/appellant shall be entitled for set off for this period.

Sd/-
L.C.BHADOO
Judge

Sd/-
V.K.Shrivastava
Judge

Barve

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